

NEAL S. SALISIAN, SBN 240277
neal.salisian@salisianlee.com
JARED T. DENSEN, SBN 325164
jared.densen@salisianlee.com
PATTY W. CHEN, SBN 322992
patty.chen@salisianlee.com
SALISIAN | LEE LLP
550 South Hope Street, Suite 750
Los Angeles, California 90071-2924
Telephone: (213) 622-9100
Facsimile: (800) 622-9145

MARISA D. POULOS (SBN 197904)
marisa.poulos@balboacapital.com
BALBOA CAPITAL CORPORATION
575 Anton Boulevard, Suite 1080
Costa Mesa, California 92626
Tel: (949) 399-6303

Attorneys for Plaintiff
AMERIS BANK d/b/a BALBOA CAPITAL CORPORATION

THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

AMERIS BANK, a Georgia state-
chartered banking corporation, doing
business as BALBOA CAPITAL
CORPORATION,

Plaintiff,

vs.

D&M TRUCK AND TIRE REPAIR
LLC, a Michigan limited liability
company; and JEREMY ONEIL, an
individual,

Defendants.

Case No. 8:25-cv-00352-SVW-DFM

[Assigned to the Hon. Stephen V. Wilson]

**BALBOA CAPITAL
CORPORATION'S MOTION FOR
DEFAULT JUDGMENT AGAINST
DEFENDANTS**

Complaint Filed: February 21, 2025
Trial Date: None

1 TO THE COURT, ALL PARTIES, AND ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 30, 2025, at 1:30 p.m., or as soon
3 thereafter as the matter may be heard, in Courtroom 10A of the First Street
4 Courthouse, located at 350 W. 1st Street, Los Angeles, California 90012, the
5 Honorable Stephen V. Wilson presiding, plaintiff Ameris Bank, doing business as
6 Balboa Capital Corporation (“Plaintiff” or “Balboa”) will, and hereby does, apply
7 for an entry of default judgment pursuant to Federal Rules of Civil Procedure Rule
8 55 and Local Rules 55-1, 55-2, and 55-3, against defendants D&M Truck and Tire
9 Repair LLC (“D&M”), and Jeremy Oneil (“Oneil”) (collectively, “Defendants”),
10 for a judgment amount of **\$143,667.18**.

11 PLEASE TAKE FURTHER NOTICE that Balboa seeks a default judgment
12 against Defendants in the total amount of \$143,667.18, as Balboa has established
13 (a) a sum certain due and owing by Defendants to Balboa pursuant to Equipment
14 Financing Agreement and Guaranty entered into by Defendants and Balboa; (b) that
15 Defendants are not in military service and are neither a minor or incompetent
16 person; and (c) costs and attorneys’ fees are properly awardable.

17 //

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 PLEASE TAKE FURTHER NOTICE that this motion is based on this
2 Notice of Motion, the supporting Memorandum of Points and Authorities, the
3 supporting declarations of Patty W. Chen and Don Ngo, and the exhibits attached
4 thereto, the pleadings and papers filed in this action, and upon such further briefing,
5 authorities, and argument submitted to the Court prior to, or during, the hearing on
6 this matter.

7
8 DATED: May 29, 2025

SALISIAN | LEE LLP

9
10 By: 

11 Patty W. Chen
12 Jared T. Densen
13 Neal S. Salisian

14 Attorneys for Plaintiff
15 AMERIS BANK d/b/a BALBOA CAPITAL
16 CORPORATION
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION AND RELEVANT FACTS	1
a.	The Equipment Financing Agreement	1
b.	Attorneys’ Fees and Costs	2
c.	Default Judgment Motion	2
II.	LEGAL ARGUMENT	4
A.	Plaintiff Will Be Highly Prejudiced If Its Default Judgment Motion Is Denied.....	5
B.	Plaintiff Has A High Likelihood Of Success On The Merits Of Its Substantive Claims And Its Complaint Is Sufficiently Pled.....	6
C.	The Sum Of Money At Stake Favors An Entry Of A Default Judgment Against Defendants.	7
D.	There Are No Material Facts That Are Reasonably In Dispute.	9
E.	Defendants’ Defaults Are Not The Result Of Excusable Neglect.....	10
F.	Policy Concerns Favor Default Judgment In This Matter.	11
G.	Plaintiff Has Proven Its Damages.	12
III.	CONCLUSION	13

TABLE OF AUTHORITIES

CASES

<i>Acoustics, Inc. v. Trepte Constr. Co.,</i> 14 Cal. App. 3d 887, 916 (1971).....	6
<i>Draper v. Coombs,</i> 792 F.2d 915, 924 (9th Cir. 1986).....	10
<i>Educational Serv., Inc. v. Maryland State Board for Higher Education,</i> 710 F.2d 170, 176 (4th Cir. 1983).....	10
<i>Eitel v. McCool,</i> 782 F.2d 1470, 1471-72 (9th Cir. 1986).	3, 4, 6, 7, 8, 10
<i>Geddes v. United Fin. Group,</i> 559 F.2d 557, 560 (9th Cir. 1977).....	6, 9
<i>Landstar Ranger, Inc. v. Parth Enters, Inc.,</i> 725 F. Supp. 2d 916, 921 (C.D. Cal. 2010)	9
<i>McKnight v. Webster,</i> 499 F. Supp. 420, 424 (E.D. PA 1980)	10
<i>NewGen, LLC v. Safe Cig, LLC,</i> 804 F.3d 606, 616 (9th Cir. 2016).....	10, 11
<i>O'Connor v. State of Nevada,</i> 27 F.3d 357, 364 (9th Cir. 1994).....	10
<i>Pena v. Seguros La Comercia, S.A.,</i> 770 F.2d 811, 814 (9th Cir. 1985).....	11
<i>Penpower Tech, Ltd. v. S.P.C. Tech.,</i> 627 F. Supp. 2d 1083 (N.D. Cal. 2008)	8, 12
<i>PepsiCo, Inc. v. Cal. Sec. Cans,</i> 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).	5, 6
<i>Reichert v. Gen. Ins. Co.,</i> 68 Cal.2d 822, 830 (1968).....	6
<i>Shanghai Automation Instrument Co. Ltd. v. Kuei,</i> 194 F. Supp. 2d 995, 1005 (N.D. Cal. 2001)	11

1 *Walters v. Statewide Concrete Barrier, Inc.*,
2 No. C 04-2559 JSW, 2006 WL 2527776, at *4 (N.D. Cal. Aug. 30, 2006)..... 7

3 **STATUTES**

4 Code of Civil Procedure § 1620 6

5 Code of Civil Procedure § 3300 6

6 Fed. R. Civ. P. 55..... 4

7 **OTHER AUTHORITIES**

8 RESTATEMENT 2d. CONTRACTS § 235(2)..... 6

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT FACTS

Plaintiff Ameris Bank, a Georgia state-chartered banking corporation, doing business as Balboa Capital Corporation (“Plaintiff” or “Balboa”) submits the instant Motion for Default Judgment against defendants D&M Truck and Tire Repair LLC (“D&M”), a Michigan limited liability company, and Jeremy Oneil (“Oneil”) (collectively, “Defendants”).

a. The Equipment Financing Agreement.

This action involves a claim for damages by Balboa against Defendants for breach of the written Equipment Financing Agreement No. 434636-000 (the “EFA”), and breach of the corresponding personal guaranty of that agreement. [See Ngo Decl., ¶3, Exh. A.]

Specifically, Balboa, on the one hand, and D&M, on the other, entered into the EFA on or about January 19, 2023. [See *id.*] Under the terms of the EFA, Balboa loaned to D&M the sum of \$125,000.00, in order to finance equipment for its business (the “Collateral”). [See *id.*]

Concurrently with the execution of the EFA, and in order to induce Balboa to enter into the EFA with D&M, Oneil guaranteed, in writing, the payment of the then-existing and future indebtedness due and owing to Balboa under the terms of the EFA (the “Guaranty”). [See *id.*, ¶4, Exh. B.] Balboa relied on the Guaranty to finance the Collateral for D&M’s business. [See *id.*]

Under the EFA, D&M was required to make three (3) monthly payments of \$0.00 and fifty-seven (57) monthly payments of \$2,917.98, beginning on March 1, 2023. [See *id.*, ¶5, Exh. A.] The last payment received by Balboa was credited toward the payment due for July 1, 2024. [See *id.*, Exh. C.] Therefore, on August 1, 2024, D&M breached the EFA, and Oneil breached the Guaranty, by failing to make the monthly payment due on that date, and thus, both have remained continuously in default. [See *id.*]

1 At the time of Defendants' default, in addition to late charges in the amount
2 of \$683.52, there remained forty-three (43) monthly payments, for a total of
3 \$125,473.14 due to Balboa. [See *id.*, ¶6, Exh. C.] At the time of Defendants'
4 default, Balboa was owed \$125,473.14. [See *id.*] Defendants have since failed to
5 make further payments. [See *id.*] Thus, \$125,473.14 remains owed to Balboa.
6 [See *id.*]

7 In addition, based on the amount due of \$125,473.14, Balboa is entitled to
8 prejudgment interest at the statutory rate of ten percent (10%) per annum pursuant
9 to Cal. Civ. Code section 3298(b), from August 1, 2024, the date of breach, to June
10 30, 2025, the date noticed for the hearing of this Motion for Default Judgment
11 ("Default Motion"), for a total interest amount of **\$11,479.58**, accruing at a rate of
12 **\$34.37 per day**, until the entry of judgment. [See *id.*, ¶7; see also Chen Decl., ¶¶5-
13 6.]

14 **b. Attorneys' Fees and Costs**

15 Pursuant to the Paragraph 18 of the EFA, Balboa is entitled to recover its
16 attorneys' fees and costs from Defendants. [See Chen Decl., ¶7.] The amount of
17 reasonable attorneys' fees is fixed by Local Rule 55-3, in the sum of **\$6,109.46**.
18 [See *id.*] Balboa has indeed incurred **\$605.00**, in recoverable costs - \$405.00 for
19 filing of the Complaint, \$100.00 for service upon D&M, and \$100.00 for service
20 upon Oneil. [See *id.*, Exh. E.]

21 **c. Default Judgment Motion**

22 Balboa's Default Motion satisfies the procedural requirements of Local Rule
23 55-1 and 55-2, and Federal Rule of Civil Procedure 55(b). Balboa filed its
24 Complaint and case-initiating documents on October 8, 2024. [See Dkts. 1-4.]
25 Defendants D&M and Oneil were properly served on March 24, 2025, pursuant to
26 Federal Rule of Civil Procedure 4. [See Dkts. 11-12.] On April 21, 2025, Balboa
27 filed its Request for Clerk to Enter Default against Defendants ("Default Entry
28 Request"), and the Clerk entered default on April 22, 2025. [See Dkts. 14-15.]

1 Defendants are not minors, incompetent persons, or persons in military
2 service or otherwise exempted from default judgment under the Servicemembers
3 Civil Relief Act of 1940 (the “SCRA”). [See Chen Decl., ¶4, Exh. D.]

4 Moreover, this Court has subject matter jurisdiction over the instant action.
5 The amount in controversy, as alleged in the Complaint and as set forth herein,
6 exceeds \$75,000. [See Dkt. 1; see also Chen Decl., ¶8.] Plaintiff Balboa was and
7 still operates as a California corporation, with its principal place of business in
8 Orange County, California. [See *id.*] Balboa is also now a wholly owned
9 subsidiary of Ameris Bank, and operating as a division of Ameris Bank, a Georgia
10 state-chartered banking corporation, and accordingly, Balboa is a citizen of the
11 State of California, as well as the State of Georgia, via its parent company, Ameris
12 Bank. [See *id.*]

13 Based upon my office’s research, and information and belief, defendant
14 D&M is a Michigan limited liability company. [See *id.*, ¶9, Exh. F.] Based upon
15 research, and upon information and belief, D&M has one member – defendant
16 Oneil – who is a citizen of the State of Michigan. [See *id.*; Ngo Decl., Exh A.]
17 Thus, D&M is a citizen of the State of Michigan. [See *id.*] Based upon my office’s
18 research, and information and belief, including the Driver’s License Oneil
19 submitted to Balboa, Oneil is domiciled at Detroit, Michigan 48204. [See *id.*]
20 Thus, Oneil is a citizen of the State of Michigan. [See *id.*] As such, there exists
21 complete diversity amongst Plaintiff and Defendants. [See *id.*, ¶9.]

22 As set forth below, a default judgment should be entered against each of the
23 Defendants since Balboa satisfies all seven factors under *Eitel*. Moreover, Balboa
24 has adequately proven its damages. Thus, Balboa respectfully requests that this
25 Court grant its request for a default judgment against Defendants in the amount of
26 **\$143,667.18.**

1 **II. LEGAL ARGUMENT**

2 “When a party against whom a judgment for affirmative relief is sought has
3 failed to plead or otherwise defend,” the Court may enter a judgment of default
4 upon Plaintiff’s application after an entry of default. *See* Fed. R. Civ. P. 55. Local
5 Rule 55 sets forth the procedural requirements that must be satisfied by a party
6 moving for a default judgment. Balboa’s Motion has satisfied such requirements.

7 Here, Balboa filed its Complaint and case-initiating documents on October 8,
8 2024. [See Dkts. 1-4.] Defendants D&M and Oneil were properly served on March
9 24, 2025, pursuant to Federal Rule of Civil Procedure 4. [See Dkts. 11-12.] On
10 April 21, 2025, Balboa filed its Default Entry Request, and the Clerk entered
11 default on April 22, 2025. [See Dkts. 14-15.]

12 Defendants are not minors, incompetent persons, or persons in military
13 service or otherwise exempted from default judgment under the SCRA. [See Chen
14 Decl., ¶4, Exh. D.]

15 The Ninth Circuit follow the seven *Eitel* factors in deciding whether to enter
16 a default judgment:

17 (1) the possibility of prejudice to the plaintiff; (2) the merits
18 of plaintiff’s substantive claim; (3) the sufficiency of the
19 complaint; (4) the sum of money at stake in the action; (5)
20 the possibility of a dispute concerning material facts; (6)
whether the default was due to excusable neglect; and (7)
the strong policy underlying the Federal Rules of Civil
Procedure favoring decisions on the merits.

21 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). A plaintiff need not
22 prove that all seven factors weigh in its favor, as courts *may* consider these factors
23 in their discretion on whether to enter a default judgment. *See id.*

24 Here, the underlying facts in this action show that all seven of the *Eitel*
25 factors weigh in Balboa’s favor, and thus support the entry of default judgment.
26
27
28

1 **A. Plaintiff Will Be Highly Prejudiced If Its Default Judgment**
2 **Motion Is Denied.**

3 A situation in which a plaintiff will be without any other recourse or recovery
4 should its default judgment application be denied qualifies as prejudice. *See*
5 *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

6 Here, Balboa has submitted its Motion for Default Judgment as a last resort
7 due to Defendants' deliberate unwillingness to accept responsibility for its actions
8 or even acknowledge Balboa's allegations.

9 The fact remains that Balboa, pursuant to the EFA, financed the Collateral
10 for D&M, with Defendants agreeing to make three (3) monthly payments of \$0.00
11 and fifty-seven (57) monthly payments of \$2,917.98, for which forty-eight (48)
12 monthly payments, plus late charges of \$683.52, for a total of \$125,473.14. [*See*
13 *Ngo Decl.*, ¶¶5-7, *Exhs. A-B.*] Defendants have since failed to make further
14 payments. [*See id.*] Thus, **\$125,473.14** remains owed to Balboa. [*See id.*]

15 Balboa has made demands for its monies from Defendants and under the
16 Guaranty, all of which Defendants have failed to pay back. [*See id.*, ¶8.]

17 Balboa filed its Complaint in this action to recover the monies owed on it,
18 but Defendants have been unwilling to participate in, or otherwise acknowledge, the
19 litigation. Balboa's Default Motion is its final option for an attempt at recovery,
20 and without the Court granting the default judgment, Balboa will be prejudiced and
21 be denied its right to a judicial resolution of its presented claims. *See PepsiCo*, 238
22 F. Supp. 2d at 1177.

23 Moreover, if Balboa's Default Motion is denied, it will suffer a significant
24 loss due to no fault of its own, and Defendants will obtain a significant windfall of
25 over \$143,667.18. Not only will the deliberate nonaction by Defendants and their
26 continued stalling techniques be unjustly rewarded, but Balboa will effectively be
27 penalized for its procedurally proper demands for the return of its monies available
28 through the court system's proper channels.

1 Balboa will be substantially prejudiced, especially with no other available
2 recourse, should its Default Motion be denied, and thus, the Default Motion against
3 Defendants should be granted.

4 **B. Plaintiff Has A High Likelihood Of Success On The Merits Of Its**
5 **Substantive Claims And Its Complaint Is Sufficiently Pled.**

6 “The general rule of law is that upon default[,] the factual allegations of the
7 complaint, except those relating to the amount of damages, will be taken as true.”
8 *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). Courts often
9 consider the second (merits of the claim) and third (sufficiency of the complaint)
10 factors under *Eitel* together. *See PepsiCo*, 238 F. Supp. 2d at 1177.

11 The elements for a breach of contract are: (1) the existence of a contract, (2)
12 performance by the plaintiff of its obligations under the contract, (3) breach of the
13 contract by the defendant, and (4) resulting damages proximately caused by the
14 defendant’s breach of contract. *Reichert v. Gen. Ins. Co.*, 68 Cal.2d 822, 830
15 (1968); *Acoustics, Inc. v. Trepte Constr. Co.*, 14 Cal. App. 3d 887, 916 (1971); *see*
16 *also* Civ. Code §§ 1620, 3300; and RESTATEMENT 2d. CONTRACTS § 235(2).

17 Here, all the elements are met. Specifically, Balboa, on the one hand, and
18 D&M, on the other, entered into the EFA on or about January 19, 2023. [Ngo
19 Decl., ¶3, Exh. A.] Under the terms of the EFA, Balboa loaned to D&M the sum of
20 \$125,000.00, in order to finance the Collateral for its business. [*See id.*]

21 Concurrently with the execution of the EFA, and in order to induce Balboa to
22 enter into the EFA with D&M, Oneil guaranteed, in writing, the payment of the
23 then-existing and future indebtedness due and owing to Balboa under the terms of
24 the EFA through the Guaranty. [*See id.*, ¶4, Exh. B.] Balboa relied on the
25 Guaranty to finance the Collateral for D&M’s business. [*See id.*]

26 Under the EFA, D&M was required to make three (3) monthly payments of
27 \$0.00 and fifty-seven (57) monthly payments of \$2,917.98, beginning on March 1,
28 2023. [*See id.*, ¶5, Exh. A.] The last payment received by Balboa was credited

1 toward the payment due for July 1, 2024. [*See id.*, Exh. C.] Therefore, on August
2 1, 2024, D&M breached the EFA, and Oneil breached the Guaranty, by failing to
3 make the monthly payment due on that date, and thus, both have remained
4 continuously in default. [*See id.*]

5 At the time of Defendants' default, in addition to late charges in the amount
6 of \$683.52, there remained forty-three (43) monthly payments, for a total of
7 \$125,473.14 due to Balboa. [*See id.*, ¶6, Exh. C.] Defendants have since failed to
8 make further payments. [*See id.*] Thus, **\$125,473.14** remains owed to Balboa.
9 [*See id.*]

10 There is no doubt, and it cannot be disputed that: (1) Balboa and Defendants
11 entered into the EFA; (2) Oneil personally guaranteed, in writing, the payment of
12 the then-existing and future indebtedness due and owing to Balboa under the terms
13 of the EFA; (3) D&M received the loan in order to finance the Collateral for its
14 business; (4) Defendants ceased making payments pursuant to the EFA and the
15 Guaranty; and (5) Balboa has suffered and continues to suffer damages due to
16 Defendants' continued nonpayment under the EFA. Thus, Balboa has a
17 substantially high likelihood in succeeding on the merits of its claims. In fact, no
18 known defenses exist to any of the material facts.

19 **C. The Sum Of Money At Stake Favors An Entry Of A Default**
20 **Judgment Against Defendants.**

21 As a general rule, courts factor the sum of money at stake on a case-by-case
22 basis, and in relation to the other factors influencing whether to enter default
23 judgment. *See Eitel*, 782 F.2d at 1472 (default judgment was denied where plaintiff
24 was seeking \$3 million in damages *and* the parties disputed material facts). This
25 requires the court to assess whether the recovery sought is proportional to the harm
26 caused by defendant's conduct. *See Walters v. Statewide Concrete Barrier, Inc.*,
27 No. C 04-2559 JSW, 2006 WL 2527776, at *4 (N.D. Cal. Aug. 30, 2006) ("[i]f the
28

1 sum of money at issue is reasonably proportionate to the harm caused by the
2 defendant's actions, then default judgment is warranted").

3 In *Penpower Tech, Ltd. v. S.P.C. Tech.*, 627 F. Supp. 2d 1083 (N.D. Cal.
4 2008), despite reasoning that plaintiff's request for \$677,075.37 in treble damages,
5 \$500,000.00 in punitive damages, \$100,000.00 in statutory damages, attorneys'
6 fees of \$16,497.00, and costs of \$2,005.00, were "speculative" and weighed against
7 default judgment, the court nevertheless granted plaintiff's default judgment.

8 Here, Balboa seeks compensatory damages pursuant to the EFA in the
9 amount of **\$125,473.14**; prejudgment interest from August 1, 2024, the date of
10 breach, to June 30, 2025, the date noticed for the hearing of this Default Motion, in
11 the amount of **\$11,479.58**, plus **\$34.37 per day**, until the entry of judgment. [*See*
12 *id.*, ¶¶5-6.] Moreover, Balboa seeks statutory attorneys' fees, in the amount of
13 **\$6,109.46**; and costs in the amount of **\$605.00**. [*See id.*, ¶7; Chen Decl., ¶¶5-7,
14 Exh. E.]

15 The damages sought are contractually-based and arise out of the clear terms
16 and obligations of the EFA; the prejudgment interest was calculated at the statutory
17 rate of ten percent (10%) per annum pursuant to Cal. Civ. Code section 3298; and
18 the attorneys' fees requested are fixed by Local Rule 55-3. [*See id.*]

19 As such, the sum of money sought is reasonable and far from speculative. It
20 is also substantially less than the \$3 million sought in *Eitel*, in which this sum, and
21 other factors, weighed in the favor of denying default judgment. And it is also
22 substantially less than the roughly \$1.3 million sought in *Penpower Tech*, in which
23 default judgment was granted, despite the sum of money being deemed
24 "speculative."

25 Thus, the sum of money sought in this action weighs in favor of granting
26 default judgment, especially in the light of the other seven *Eitel* factors, and due to
27 the certainty and reasonableness of the sum.
28

1 **D. There Are No Material Facts That Are Reasonably In Dispute.**

2 “The general rule of law is that upon default[,] the factual allegations of the
3 complaint, except those relating to the amount of damages, will be taken as true.”
4 *See Geddes, supra*, 559 F.2d at 560. Where a plaintiff’s complaint is well-pleaded
5 and the defendants make no effort to properly respond, the likelihood of disputed
6 facts is very low. *See Landstar Ranger, Inc. v. Parth Enters, Inc.*, 725 F. Supp. 2d
7 916, 921 (C.D. Cal. 2010).

8 As thoroughly detailed in Section II.B., *supra*, there are no material facts that
9 are reasonably in dispute.

10 Here, Balboa, on the one hand, and D&M, on the other, entered into the EFA
11 on or about January 19, 2023. [Ngo Decl., ¶3, Exh. A.] Under the terms of the
12 EFA, Balboa loaned to D&M the sum of \$125,000.00, in order to finance the
13 Collateral for its business. [*See id.*]

14 Concurrently with the execution of the EFA, and in order to induce Balboa to
15 enter into the EFA with D&M, Oneil guaranteed, in writing, the payment of the
16 then-existing and future indebtedness due and owing to Balboa under the terms of
17 the EFA via the Guaranty. [*See id.*, ¶4, Exh. B.] Balboa relied on the Guaranty to
18 finance the Collateral for D&M’s business. [*See id.*]

19 Under the EFA, D&M was required to make three (3) monthly payments of
20 \$0.00 and fifty-seven (57) monthly payments of \$2,917.98, beginning on March 1,
21 2023. [*See id.*, ¶5, Exh. A.] The last payment received by Balboa was credited
22 toward the payment due for July 1, 2024. [*See id.*, Exh. C.] Therefore, on August
23 1, 2024, D&M breached the EFA, and Oneil breached the Guaranty, by failing to
24 make the monthly payment due on that date, and thus, both have remained
25 continuously in default. [*See id.*]

26 At the time of Defendants’ default, in addition to late charges in the amount
27 of \$683.52, there remained forty-three (43) monthly payments, for a total of
28 \$125,473.14 due to Balboa. [*See id.*, ¶6, Exh. C.] Thus, **\$125,473.14** remains

1 owed to Balboa. [*See id.*] Defendants have since failed to make further payments.
2 [*See id.*]

3 Defendants cannot dispute any of the facts in any way or make any
4 reasonable arguments surrounding any of the material facts in this action. If
5 anything, Defendants' refusal to participate in, or even acknowledge the litigation,
6 is evidence that no such defense exists.

7 **E. Defendants' Defaults Are Not The Result Of Excusable Neglect.**

8 Excusable neglect is not found where a defendant who was properly served
9 simply ignored the deadline to respond. *See NewGen, LLC v. Safe Cig, LLC*, 804
10 F.3d 606, 616 (9th Cir. 2016) (adding that defendant's counsel contacting plaintiff's
11 counsel after default had been entered did not constitute to "excusable neglect"). In
12 fact, courts have required some showing of good faith by the defaulted defendant to
13 constitute "excusable neglect." *See Eitel*, 782 F.2d at 1471-72 (defendant's failure
14 to answer was held to be excusable neglect in light of ongoing settlement
15 negotiations); *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986) (finding
16 excusable neglect where defendant filed an answer past the deadline and on the
17 same day that the motion for default judgment was filed); *O'Connor v. State of*
18 *Nevada*, 27 F.3d 357, 364 (9th Cir. 1994) (excusable neglect was found where
19 defendant has good faith of a timely answer); *Educational Serv., Inc. v. Maryland*
20 *State Board for Higher Education*, 710 F.2d 170, 176 (4th Cir. 1983) (excusable
21 neglect found where defendant had appeared in the action and opposed a request for
22 a preliminary injunction in which the party had set forth its defenses); *McKnight v.*
23 *Webster*, 499 F. Supp. 420, 424 (E.D. PA 1980) (excusable neglect found where
24 defendant sought an extension of time to respond, but a default judgment was
25 sought in the interim).

26 Where the defendants "were properly served with the Complaint, the notice
27 for the entry of default, as well as documents in support of the instant [default
28 judgment application]," favors this factor for the entry of default judgment. *See*

1 *Shanghai Automation Instrument Co. Ltd. v. Kuei*, 194 F. Supp. 2d 995, 1005 (N.D.
2 Cal. 2001).

3 Here, Defendants failed to make any showing whatsoever that their
4 unwillingness to participate in the litigation stemmed from, or was in any way due
5 to, excusable neglect. On March 24, 2025, Balboa served Defendants by personal
6 service upon defendant Oneil, as an individual and as the managing member of
7 D&M, at 2825 Dillon Drive, Ann Arbor, Michigan 48105. [See Dkts. 11-12.]

8 Further, Defendants were additionally served at the same address thereafter
9 with the Default Entry Request. [See Dkt. 14.] Defendants have not yet made any
10 appearance in the action, and thus, have not made any effort to answer, defend, or
11 otherwise participate, in this action.

12 As detailed above, courts have found for excusable neglect only in cases in
13 which a defendant makes good faith showing that the defendant attempts to
14 participate in the litigation to address and defend the allegations set forth against the
15 defendant. Declining to respond to a complaint after proper service (even in the
16 case where defendant's counsel contacts plaintiff's counsel after the entry of
17 default), does not warrant a finding of excusable neglect. *See NewGen*, 804 F.3d at
18 616.

19 Here, Defendants have failed to acknowledge their wrongdoings and the
20 allegations they face, even in the slightest degree. Instead, Defendants have
21 blatantly ignored Balboa's Complaint and all other papers filed thereafter. Rather,
22 Defendants' course of action in response to Balboa's Complaint, or the apparent
23 lack thereof, is intentional, and thus would not constitute excusable neglect.

24 **F. Policy Concerns Favor Default Judgment In This Matter.**

25 Although courts have expressed that as a general rule, policy favors decisions
26 on the merits, cases should be decided on its merits only when *reasonably possible*.
27 *See Pena v. Seguros La Comercia, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985)
28 (emphasis added). The policy preference to decide a case on its merits is not

1 dispositive, and thus does not preclude a court from granting a default judgment.
2 *See Penpower Tech, Ltd.*, 627 F. Supp. 2d at 1093 (defendants' failure to respond to
3 a Complaint makes a case decision on its merits impractical, if not, impossible).

4 Here, even the policy concerns to decide a case on its merits favor Balboa to
5 grant Balboa's request for a default judgment. As detailed in II.E., *supra*,
6 Defendants have made it abundantly clear that they will not participate in this
7 litigation or even acknowledge the instant action. Defendants have deliberately
8 chosen a course of action to simply ignore Balboa and its claims against them,
9 including their own liability. Thus, the Court's decision will not be based on the
10 merits of this case since there is no reasonable possibility at this point given
11 Defendants' refusal to participate in this litigation.

12 Moreover, policy concerns certainly do not weigh in favor of rewarding
13 Defendants for their unwillingness to account for their liability to Balboa, and the
14 extremely prejudicial windfall they would receive should their deliberate silence
15 and stalling techniques be rewarded, at Balboa's expense. *See* Section II.A., *supra*.

16 **G. Plaintiff Has Proven Its Damages.**

17 Under the EFA, D&M was required to make three (3) monthly payments of
18 \$0.00 and fifty-seven (57) monthly payments of \$2,917.98, beginning on March 1,
19 2023. [Ngo Decl., ¶5, Exh. A.] The last payment received by Balboa was credited
20 toward the payment due for July 1, 2024. [*See id.*, Exh. C.] Therefore, on August
21 1, 2024, D&M breached the EFA, and Oneil breached the Guaranty, by failing to
22 make the monthly payment due on that date, and thus, both have remained
23 continuously in default. [*See id.*]

24 At the time of Defendants' default, in addition to late charges in the amount
25 of \$683.52, there remained forty-three (43) monthly payments, for a total of
26 \$125,473.14 due to Balboa. [*See id.*, ¶6, Exh. C.]

27 In addition, based on the amount due of \$125,473.14, Balboa is entitled to
28 prejudgment interest at the statutory rate of ten percent (10%) per annum, from

1 August 1, 2024, the date of breach, to June 30, 2025, the date noticed for the
2 hearing of this Default Motion, for a total interest amount of **\$11,479.58**, accruing
3 at a rate of **\$34.37 per day**, until the entry of judgment. [*See id.*, ¶7; *see also* Chen
4 Decl., ¶¶5-6.]

5 Pursuant to the Paragraph 18 of the EFA, Balboa is entitled to recover its
6 attorneys' fees and costs from Defendants. [*See* Chen Decl., ¶7.] The amount of
7 reasonable attorneys' fees is fixed by Local Rule 55-3, in the sum of **\$6,109.46**.
8 [*See id.*] Balboa has indeed incurred **\$605.00**, in recoverable costs - \$405.00 for
9 filing of the Complaint, \$100.00 for service upon D&M, and \$100.00 for service
10 upon Oneil. [*See id.*, Exh. E.]

11 Altogether, this totals out to **\$143,667.18** (as of June 30, 2025), calculated as
12 follows:

13	- Amount owed:	\$ 125,473.14
14	- Prejudgment Interest:	\$ 11,479.58
15	- Attorneys' Fees:	\$ 6,109.46
16	- <u>Recoverable Costs:</u>	<u>\$ 605.00</u>
17	- Total:	<u>\$143,667.18</u>

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

26 //

27 //

28 //

1 **III. CONCLUSION**

2 Based on Balboa's Default Judgment Motion, and all supporting papers,
3 Balboa respectfully requests that the Court grant its Default Judgment Motion
4 against Defendants, in the total amount of **\$143,667.18**.

5
6 DATE: May 29, 2025

SALISIAN | LEE LLP

7
8 By: 

Patty W. Chen

Jared T. Densen

9 Neal S. Salisian

10
11 Attorneys for Plaintiff
12 AMERIS BANK d/b/a BALBOA CAPITAL
13 CORPORATION
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28